This practice of having official witnesses to every contract, and summoning them to give evidence should a dispute later arise, is one of the most important means of maintaining order in Nyakyusa society, and village neighbours are the usual witnesses. 675

6. *Communal responsibility of the age-village*

Formerly, in Nyakyusa law two forms of group responsibility were emphasized: the mutual responsibility of kinsmen, and the mutual responsibility of fellow villagers. A case of murder or manslaughter was primarily the concern of the agnatic lineage if the victim was a male or an unmarried girl, and of the lineages of both husband and father if the victim was a married woman. The kinsmen either killed the murderer, or brought him before the chief, who imposed a fine which went to the injured relatives. The Nyakyusa make a distinction between 'spearing by day' (direct physical injury) and 'spearing by night' (witchcraft); and only in the latter type of case did the fine go to the chief. Witchcraft was thus treated as an offence against the state—the chiefdom—while murder or manslaughter was an offence against the kinsmen of the dead. The concern of the state in witchcraft, and the joint responsibility of kinsmen on the one hand, and of fellow villagers on the other, was evident when, as sometimes happened, both groups were required by the chief to clear themselves of suspicion of witchcraft by each providing a representative to take the poison ordeal. Should the representative of either group fail to vomit then the responsible individual within that group was sought out by means of divination and the ordeal (vide supra, p. 106). 613 621 672 754 682

In a case of adultery the injured husband, together with his kinsmen, pursued and attempted to kill, or torture and kill, the adulterer: self-help was not only permitted but expected in this situation,[1] and a man's near kinsmen were obliged to assist him. Neighbours were not obliged to assist in executing vengeance, but they might be victims of it, for if the injured husband did not find the adulterer he might kill any village-mate of his enemy. Such an attack commonly led to war between the two villages, 684 696 721

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[1] Cf. D. R. Mackenzie, *The Spirit-Ridden Konde* (1925), p. 81, note: 'The injured husband has the right to inflict death on the paramour. This is no mere tale of the past but a grim fact to-day . . . some of the cases are very distressing.'

CHAPTER VII

RITUALS OF MISFORTUNE

845 An abnormal birth is the most dangerous misfortune that can befall a family in Nyakyusa society, and the ritual to ward off its expected results is the most elaborate, but there are lesser misfortunes also, which may be averted by simpler rituals.

783 (a) *Cleansing after spearing*

● 682 When one man has speared another and killed him, even though the action was legitimate (as slaying an enemy in battle, or a cattle thief or an adulterer caught *in flagrante delicto*), the slayer and his relatives dare not eat together with the relatives of the slain, or enter their houses, lest they themselves, and the kinsmen of the slain also, fall ill, coughing, spitting blood, and wasting away. This sickness is known as *ubutungu*, 'the disease of spearing'.[1] Both parties are thought to suffer primarily from contact with each other and both protect themselves by drinking medicines, but they drink separately, each engaging a doctor to treat them. We were told:

> [783] If one man kills another it does not finish. He begets children and they die; an autopsy is performed and reveals fighting with spears (*ukugwana*).[2] The disease may not injure the slayer or his children, but the relatives with whom he eats and drinks, and so also on the other side; it may not hurt the children of the dead man, but those relatives with whom his children eat and drink.
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> We all fall ill, especially the brothers of the slain. The murderer always remembers to drink the medicine because he knows that he had killed someone, but when your brother was slain perhaps you forget to drink the medicine. Then, afterwards, if you drank beer with someone, not knowing that it was he who had killed your brother, you fall ill.

783 The manner of treatment is as follows:

> If I have killed someone they take me to a waterfall and make me

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[1] *Ingwego*: a spear. [2] *Ukugwana*: to fight together with spears.

vomit by tickling the back of my throat with a hen's feather, while I am standing under the fall with the water coming down on my head. The blood of him you have killed is in the waterfall. May it not come! May it all go out of the body! You vomit because it is there in the body. May it go out! Then a medicine is cooked and the legs of the slayer and his relatives are scalded with it. It is the medicine of twins: the twin medicine and the spearing medicine are one because they are a rejection of the blood. When people's legs have been splashed then we all disperse; that is to drive away him whom we have killed.' 780

But even after such treatment the kin of the slayer and the slain fear to eat together. 'We remain enemies. If we eat with them it makes us thin.' 782 664

Those who drink protective medicines are the agnatic kin of the slayer and the slain, their mothers' kin (*abipwa*) and their wives, but not their affines. 'Those who must be treated are wives, and blood relatives but not affines. Affines are of different blood, but wives are of your flesh.'

The spearing ritual is not a joint ritual in which a large group of kin participate; married men, even brothers, make their own arrangements for taking protective medicines. 783

'We do not meet together with all our relatives, the descendants of one man, no, it is not like the twin ritual. We drink it each man with his wives and children in his house. If I have a married brother he also goes to a doctor to ask for medicines for himself. He seeks his own doctor, not the one to whom I went. We drink separately, we do not meet together when we drink.'

Only if a daughter had been given in compensation for a murder (as sometimes happened) and later he who married her took marriage cattle to her father to establish kinship, then, our informants said, the two parties should drink the 'medicine of spearing' (*amafwa gwa lifumo*) together. [illegible] 662

(f) *Cutting the rope*

A man who has been bound with ropes (*ingoji*), or has committed suicide by hanging,[1] or stolen cattle and tethered them, is also [illegible] [illegible] [illegible]

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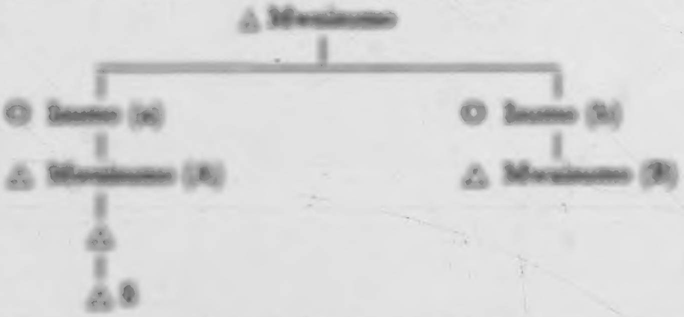
[1] What the incidence of suicide is among the Nyakyusa we do not know. The Rev. Merensky, one of the first Europeans to live in the area, speaks of it being 'not uncommon'. We recorded two cases: one of a man whose wife and children had died; the other a woman forced to leave her lover and marry against her will. [illegible] a Christian [illegible] the pagan elder brother that he would commit suicide if his brother insisted on the pagan practice of performing an autopsy on the body of their dead sister.

2: Wilson E-5 (1934-1938)1957 FN17 Ngonde FN17
Nyakyusa

sister immediately older than herself, the sister's daughter, and the sister immediately younger than herself, took part. [illegible] 604

At the ritual of spearing, the principals are the children and grandchildren of the slayer and the slain, their brothers, their mother's kin (abipwa) and their wives. We were not able to watch any case of treatment against [illegible] and are not certain exactly how far the infection is thought to spread. Our informants were agreed that the number of kinsmen concerned is less than in a twin ritual, but we found one case in which a minor chief, Mwakisonse (B), forbade the father of a man who had killed S., the great grandson of Mwakisonse's mother's sister, to enter his country lest he spread disease among his relatives. 783 602 682●

[illegible]



At a ritual to 'cut the rope' those concerned are the descendants of the one who has been buried and their wives, siblings and siblings' children. At the one ritual we saw there were present 27 members of the dead man's own lineage (3 sons, 1 younger half-brother, 1 full sister, 4 half-sisters, 3 sons, 3 daughters, 2 grandsons, 7 granddaughters), one wife, the wives of 4 sons, one father's sister's son, one son and 6 daughters of his sisters or half-sisters. 783 602

The ritual for protection against insanity which we attended was performed at the home of the senior brother (heir to his father) of the dead woman. There were present her two brothers, their wives and children; her father's brother's daughter; two wives and one daughter of her sister's sons; her mother, two of her mother's brothers with their wives and children; two of her mother's sisters and the daughters of one of them. Her husband (who lived near there) could not take the medicine at his in-law's house, but some was sent for him to use at his home with his wives and kinsfolk. 791 603 754

In the simple ritual of prayer to the shades the senior kinsman who offers the prayer and blows out water acts alone but, if there 782 602

residence there, I never locked my doors, and the only 674
theft of which I had to complain was the pendulum of a clock taken from an open building!

Murder.—Murder is, from the native point of view, 682
a much less serious crime than cattle stealing. But it 673
should be remembered that British law calls crimes murder which are not so called by the Konde. A man who kills his wife's paramour has not committed murder: he has exacted a just revenge, and no more. In a case of real murder, the murderer or his friends usually pay a fine, or rather a compensation, of up to ten head of cattle; and the loss to the family of the murdered man is further made good by the other family handing over a daughter. This girl must never be spoken of as a substitute, for that would cause her children, when she has them, to die. It is needless to add that under British law compensation of any kind to the family of the murdered person does not acquit the murderer. What follows, therefore, is purely native law, which, if administered at all, is administered only when there is reason to believe that the police will never come to hear of it.

When a murder was committed, the chief directed 627
the friends of the murderer to bring him for trial, but 783
if they chose to put him to death themselves, the case was ended. Should it be impossible to discover the murderer, a friend of his, it hardly mattered who, was put to death, and a wide-extending vendetta might be the result. When the law is satisfied, a formal reconciliation between the two families takes place. Under the guidance of the medicine man, who is

627 783 master of ceremonies on all such occasions, a sheep, provided by the family of the murderer, is killed, and taken hold of by the parties, while the doctor divides the carcase into two parts, each side taking its share. Medicine is poured into a pot, and a red-hot spear is plunged into it. The carcase of the sheep, cooked with this medicine, is placed upon banana leaves, and the feast of reconciliation is partaken of, along with beer which also has been doctored. The reconciliation, however, is not complete until the girl has been handed over; until that is done, the feast has only stayed action on the part of the murdered man's relatives. If the murderer is not known, the relatives of the victim drink a medicine, without which, if they happened unwittingly to drink water in the culprit's house, they would themselves also die.

682 673 The murder of a pregnant woman is a very serious matter, for it is really a double murder, and the chief has to be compensated for the loss of dependents. It is more heinous to murder a woman than a man, for the woman, being dead, bears no more children, and loss to the community results.

682 672 For accidental death there are numerous regulations. If a man dies, or is killed, while in the employment of another, or on a journey with him, compensation must be paid to the relatives. There is no feast of reconciliation, for the thing was not done in malice. When a person is killed by an ox or a cow, the owner pays a cow, and kills the offending animal, lest it lead him into further trouble and expense of the same kind. If one is cutting down a tree, and some one is killed by

its fall; or if one sends another up a tree to get fruit, or for any other purpose, and the person falls down and is killed, a cow must be paid in compensation; if he is only injured, some smaller payment is made. If I permit a suicide to take place in my house, I must pay a cow, for I ought to have taken better care of my house. If a man kills himself with my spear I come under a similar penalty, and for the same reason. If a woman suckles another woman's child and it dies, the law of compensation holds good, and a cow must be paid. Very many regulations of this kind, which it would be a weariness to repeat, exist among the Konde people. 612 672

The spear with which a murder has been committed is cut off short at the haft, and the blade bent over with a stone, and it is then hung up in the roof of the house of a relative of the murderer.

Murder is frequently committed by means of poison and by witchcraft; and in either case it is difficult to trace the criminal. As an instance: a man is very quarrelsome in his village, an intolerable nuisance in fact. After a while he goes off to work somewhere, and now is the opportunity to get rid of him. In a few months news comes that he has been killed in a quarrel; but the quarrel was brought on by witchcraft. His fellow-villagers went to a sorcerer, and persuaded him to stir up the quarrelsome one to some disagreement in his new home, which would be sure to end in his death. No British magistrate would consider a charge of murder in such a case, except against the actual murderers, but the Konde will not 682 754

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be convinced that the real facts are otherwise than as I have stated. The clumsy methods of murder favoured by the cleverest of European criminals take an inferior place before the successful malignity of this kind of thing.

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Witchcraft.—No crime is regarded with so much abhorrence among Bantu people as the crime of witchcraft. It is a crime against the whole community, anti-social, destructive; and the punishment, in many cases, was death. That punishment cannot now be inflicted, but a recent Ordinance against pretended witchcraft has given much satisfaction to the people, even although the punishment is less than they think the crime demands. To them there is no pretence about it; it is a grim reality. If the poison cup proved a person guilty, he was immediately attacked with any weapon that came handy, and as a rule he was dead before he reached the end of the gauntlet; but if, as now and again happened, he got off alive, he lost no time in getting away to another district. In the not so very remote past, the guilty person was burned to death in his own house, and not always did his family escape a like fate. A special punishment was reserved for witchcraft by crocodile. This particular crime consists in bewitching a crocodile to kill an enemy. The criminal, when discovered, was put into the water in a large fish-trap, and left there until a crocodile came and made an end.

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Adultery.—This offence is said to have increased greatly since the coming of the white man, who will not permit the death penalty to be inflicted. But the

explanation among the heathen is that it was the work 685
of an ex-Christian who had died the previous day, and took the earliest opportunity, in his new state, of being revenged on those who had expelled him from the Church. In any case the act cost the Christian community at Karonga a large sum of money. Burning a house is a method frequently resorted to of "getting one's own back" from one's enemy, and detection is extremely difficult.

The Land Laws.—All the land belongs to the chief, 423
who divides it among his various headmen, and they in turn give it out to their immediate followers. New-comers are admitted and given lands by the headmen, but the grant must be confirmed by the chief, without whose consent no arrangement is final. This ownership by the chief is not mere theory, but, on the other hand, the individual has practically permanent rights in his property. He cannot be turned out at the mere caprice of anyone, and he hands on his lands to his heirs. Absence, even for many years, does not affect ownership, provided that wife or friends cultivate the land in the meantime.

The law of trespass was very severe in the past, and 685
would remain so if the natives had their way. Tres- 682
pass, however, does not mean merely walking over another man's ground; in that case there is no trespass. It means connection with the wife; and if, in the fight which followed discovery, the trespasser was killed, a charge of murder did not lie against the owner; but if the owner was killed, the trespasser was indicted for murder. If the case was remitted to the

685 chief, a cow was paid in compensation, for the man
682 could not be put to death in cold blood.

A thief caught in a garden stealing growing crops
685 is stripped of his *mawyeta* (body rings) if he has them; otherwise whatever he has is taken. This law is still nominally in force, but the culprit often prefers to take his trial at the hands of the administrative officer. And the owner has no choice, for if he takes possession by force of what native law considers his rights, he is likely to find himself accused of an illegal act.